



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2013-0789; FRL-9913-42-Region 3]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Minor New Source Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the State of West Virginia. The revision will expedite the processing of certain preconstruction permits issued under West Virginia's minor New Source Review (NSR) Program. Notably, the revision will allow, in certain circumstances, construction prior to obtaining a permit, and will allow equipment and materials to be delivered and stored onsite prior to permit issuance. EPA is approving these revisions to West Virginia's minor NSR Program in accordance with the requirements of the Clean Air Act (CAA).

DATES: This final rule is effective on [insert date 30 days from date of publication].

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2013-0789. All documents in the docket are listed in the www.regulations.gov website. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy for public inspection

during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the West Virginia Department of Environmental Protection, Division of Air Quality, 601 57th Street SE, Charleston, West Virginia 25304.

FOR FURTHER INFORMATION CONTACT: Gerallyn Duke, (215) 814-2084, or by e-mail at duke.gerallyn@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On February 14, 2014 (79 FR 8914), EPA published a notice of proposed rulemaking (NPR) for the State of West Virginia. In the NPR, EPA proposed approval of revisions to rule 45CSR13: “Permits for Construction, Modification, Relocation and Operation of Stationary Sources of Air Pollutants, Notification Requirements, Administrative Updates, Temporary Permits, General Permits, Permission to Commence Construction, and Procedures for Evaluation.” The West Virginia legislature adopted these revisions to rule 45CSR13 in 2008 and West Virginia submitted the formal SIP revision on July 20, 2009.

The purpose of this SIP revision is to shorten the time period by which permits for construction and operation may be issued for sources subject to minor NSR rules; to allow, in certain instances, construction prior to obtaining a permit; and to allow equipment and materials to be delivered and stored onsite prior to minor NSR permit issuance.

II. Summary of SIP Revision

The July 20, 2009 SIP revision will (a) reduce the time allotted for West Virginia Department of

Environmental Protection (WVDEP) to process minor NSR permits from 180 days to 90 days after a permit application is deemed complete, (b) reduce the time for WVDEP to process temporary minor NSR permits from 60 days to 45 days after a complete application is received, and (c) reduce the time for WVDEP to process Class II general permits from 90 days to 45 days after a general permit registration application is deemed complete. The SIP revision also creates a mechanism for the following types of sources to commence construction prior to obtaining a permit, provided that operation does not commence until a permit is issued: new and modified stationary sources which are not major sources, major stationary sources proposing non-major modifications, and sources subject to general permits. Sources of hazardous air pollutants subject to CAA subsections 112(g) or 112(j), sources seeking “synthetic minor” permits to avoid otherwise applicable standards, and sources requiring specific case-by-case emission limits under 45CSR21 or 45CSR27 are ineligible for permission to commence construction in advance of permit issuance. Additionally, the SIP revision allows equipment and materials to be delivered and stored onsite prior to permit issuance and includes other minor clarifying changes to West Virginia’s minor NSR rule.

If WVDEP determines that any proposed construction, modification, registration or relocation interferes with attainment or maintenance of an applicable ambient air quality standard, causes or contributes to a violation of an applicable air quality increment, or is inconsistent with the intent and purpose of 45CSR13, WVDEP shall issue an order denying the proposed activity. No permission to commence construction in advance of permit issuance is allowed if WVDEP deems it is inconsistent with any Federal requirement, Federal delegation, Federally approved requirement in any SIP, or Federally approved requirement under the title V permitting program.

Other specific requirements of the regulations and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. No public comments were received on the NPR.

III. Final Action

EPA is approving West Virginia's SIP submission dated July 20, 2009, which consists of a new version of 45CSR13 that revises West Virginia's minor NSR Program as a revision to the West Virginia SIP.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);

- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the

agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [Insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action related to West Virginia’s minor NSR Program may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: June 17, 2014

W. C. Early, Acting
Regional Administrator,
Region III.

40 CFR Part 52 is amended as follows:

PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart XX--West Virginia

2. In § 52.2520, the table in paragraph (c) is amended by revising the table heading and the entries for “[45 CSR] Series 13” to read as follows:

§ 52.2520 Identification of plan.

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(c) ***

EPA-APPROVED REGULATIONS IN THE WEST VIRGINIA SIP

| State citation [Chapter 16-20 or 45 CSR] | Title/subject | State effective date | EPA approval date | Additional explanation/ citation at 40 CFR 52.2565 |
|--|---|----------------------------|--|---|
| * * * | * * * | | | |
| [45 CSR] Series 13 | Permits for Construction, Modification, Relocation and Operation of Stationary Sources of Air Pollutants, Notification Requirements, Administrative Updates, Temporary Permits, General Permits, Permission to Commence Construction and Procedures for Evaluation | | | |
| Section 45-13-1 | General | 6/1/09 | [Insert Federal Register date of publication] [Insert Federal Register citation] | |
| Section 45-13-2 | Definitions | 6/1/09 | [Insert Federal Register date of publication] [Insert Federal Register citation] | |
| Section 45-13-3 | Reporting Requirements for Stationary Sources | 6/1/09 | [Insert Federal Register date of publication] [Insert Federal Register citation] | |
| Section 45-13-4 | Administrative Updates to | 6/1/09 | [Insert Federal | |

| | | | | |
|------------------|---|--------|---|-----|
| | Existing Permits and General Permit Registrations | | <u>Register date of publication</u> <u>[Insert Federal Register citation]</u> | |
| Section 45-13-5 | Permit Application and Reporting Requirements for Construction of and Modifications to Stationary Sources | 6/1/09 | <u>[Insert Federal Register date of publication]</u> <u>[Insert Federal Register citation]</u> | |
| Section 45-13-6 | Determination of Compliance of Stationary Sources | 6/1/09 | <u>[Insert Federal Register date of publication]</u> <u>[Insert Federal Register citation]</u> | |
| Section 45-13-7 | Modeling | 6/1/09 | <u>[Insert Federal Register date of publication]</u> <u>[Insert Federal Register citation]</u> | |
| Section 45-13-8 | Public Review Procedures | 6/1/09 | <u>[Insert Federal Register date of publication]</u> <u>[Insert Federal Register citation]</u> | |
| Section 45-13-9 | Public Meetings | 6/1/09 | <u>[Insert Federal Register date of publication]</u> <u>[Insert Federal Register citation]</u> | |
| Section 45-13-10 | Permit Transfer, Suspension, Revocation and Responsibility | 6/1/09 | <u>[Insert Federal Register date of publication]</u> <u>[Insert Federal Register citation]</u> | |
| Section 45-13-11 | Temporary Construction or Modification Permits | 6/1/09 | <u>[Insert Federal Register date of publication]</u> <u>[Insert Federal Register citation]</u> | |
| Section 45-13-12 | Permit Application Fees | 6/1/09 | <u>[Insert Federal Register date of publication]</u> <u>[Insert Federal Register citation]</u> | |
| Section 45-13-13 | Inconsistency Between Rules | 6/1/09 | <u>[Insert Federal Register date of publication]</u> <u>[Insert Federal Register citation]</u> | |
| Section 45-13-14 | Statutory Air Pollution | 6/1/09 | <u>[Insert Federal Register date of publication]</u> <u>[Insert Federal Register citation]</u> | |
| Section 45-13-15 | Hazardous Air Pollutants | 6/1/09 | <u>[Insert Federal Register date of publication]</u> <u>[Insert Federal Register citation]</u> | |
| Section 45-13-16 | Application for Permission to | 6/1/09 | <u>[Insert Federal</u> | New |

| | | | | |
|--------------|---|--------|---|--|
| | Commence Construction in Advance of Permit Issuance | | <u>Register date of publication</u> [Insert Federal Register citation] | |
| TABLE 45-13A | Potential Emission Rate | 6/1/09 | <u>[Insert Federal Register date of publication]</u> <u>[Insert Federal Register citation]</u> | |
| TABLE 45-13B | De Minimus Sources | 6/1/09 | <u>[Insert Federal Register date of publication]</u> <u>[Insert Federal Register citation]</u> | |
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[FR Doc. 2014-16409 Filed 07/18/2014 at 8:45 am; Publication Date: 07/21/2014]